

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

LURALEEN (LORI) LUTZ,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
LANCASTER PIKE STUART,	)	
LLC, and PATHMARK STORES,	)	C. A. No.: 07C-07-041 CLS
INC.,	)	
	)	
Defendants.	)	
	)	

Submitted: February 6, 2009  
Decided: February 26, 2009

Upon Plaintiff's Application for Certification of Interlocutory Appeal.  
**DENIED.**

**ORDER**

Raymond W. Cobb, Esq., 1001 North Jefferson St., Suite 208, Wilmington,  
Delaware 19801, attorney for Defendants.

William R. Peltz, Esq., Kimmel, Carter, Roman & Peltz, Plaza 273, 56 West  
Main St., 4<sup>th</sup> Floor, Christiana, Delaware, 19702, attorney for Plaintiff.

**Scott, J.**

1. This case arises from a complaint filed by Plaintiff Luraleen Lutz claiming that she suffered injury in a slip and fall that occurred at a Pathmark Store located in Wilmington, Delaware. On October 30, 2007, default judgment was entered against Defendants Lancaster Pike Stuart LLC and Pathmark Stores, Inc. after they failed to respond to the complaint. Plaintiff was awarded \$196,050.19 in damages at an inquisition hearing held on July 8, 2008. By opinion issued on January 30, 2009, this Court vacated the default judgment entered against the defendants for lack of jurisdiction due to insufficient service of process. Plaintiff has now filed this application for certification of an interlocutory appeal from the Court's decision.

2. Supreme Court Rule 42(b) requires not only that the interlocutory order determine a substantial issue and establish a legal right, but also that it meet one or more of the criteria set forth in Supreme Court Rule 42(b).<sup>1</sup> Plaintiff claims that interlocutory review of this Court's Order

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<sup>1</sup> The five criteria provided under Del.Supr. Ct. R. 42(b) are as follows:

(i) *Same as Certified Question*. Any of the criteria applicable to proceedings for certification of questions of law set forth in Rule 41; or

(ii) *Controverted Jurisdiction*. The interlocutory order has sustained the controverted jurisdiction of the trial court; or

(iii) *Substantial Issue*. An order of the trial court has reversed or set aside a prior decision of the court, a jury, or an administrative agency from which an appeal was taken to the trial court which had determined a substantial issue and established a legal right, and a review of the interlocutory order may terminate the

is appropriate under Rule 42 for two principal reasons: (1) the Order determined substantial issues and legal rights; and (2) interlocutory review of the Court's ruling may otherwise serve considerations of justice.

3. Plaintiff claims that the Court determined substantial legal rights because “all underlying issues were resolved in favor of the defendant.”<sup>2</sup>

This is not accurate. The Court’s decision to vacate the default judgment entered against the defendants did not determine a substantial issue nor did it establish a legal right. The legal issue involved in this case is whether the plaintiff is entitled to damages for the alleged slip and fall that occurred in the defendants’ store. This Court has not yet considered this legal issue and therefore has made no determination in this regard.<sup>3</sup> Rather, it decided that the parties must go to trial to argue the merits of the case. Under Delaware law, rulings that the parties must proceed to trial is not a basis for an

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litigation, substantially reduce further litigation, or otherwise serve considerations of justice; or

(iv) *Prior Judgment Opened*. The interlocutory order has vacated or opened a judgment of the trial court; or

(v) *Case Dispositive Issue*. A review of the interlocutory order may terminate the litigation or may otherwise serve considerations of justice.

<sup>2</sup> Pl. Application for Certification of Interlocutory Appeal to the Supreme Court, D.I. 14

<sup>3</sup> Compare *Levinson v. Conlon*, 385 A.2d 717 (Del. 1978)(finding that denial of a summary judgment motion generally does not establish a legal right between parties for purposes of appealing an interlocutory order.)

interlocutory appeal.<sup>4</sup> Because the rights of the parties at trial remain unchanged, plaintiff's Application for Certification of an Interlocutory Appeal is **DENIED**.

**IT IS SO ORDERED.**

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**Judge Calvin L. Scott, Jr.**

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<sup>4</sup> *Drylie v. Woods*, 1991 WL 68919 (Del. Super., April 18, 1991).